

**REMARKS/ARGUMENTS**

Claims 1-3, 5-7, 10-20, 22-26, 29-37, and 39-50 are pending in the present application. Claims 19, 36, 43, and 45 are amended. Reconsideration of the claims is respectfully requested.

**I. Telephonic Interview with Examiner Ly on May 1, 2006**

Applicant thanks Examiner Cheyne D. Ly for the courtesy extended to Applicant's representative during the May 1, 2006 telephonic interview. During the teleconference, the Examiner and Applicant's representative discussed amending independent claims 19, 36, and 43 to further distinguish the present invention from the cited prior art reference. Examiner Ly appeared to indicate that the amended independent claim language contained in this Response to Final Office Action will overcome the cited prior art reference and be entered by the Examiner if the next Office Action is non-final due to the withdrawal of the § 112 rejection of independent claims 1, 25, and 42. In addition, the Examiner appeared to indicate that if the arguments contained in this Response overcome the rejection of independent claims 1, 25, and 42 under § 112, a new prior art search will be conducted because no art is cited against claims 1, 25, and 42 in the Final Office Action. Further, the Examiner appeared to indicate that the amendment to dependent claim 45 contained in this Response will overcome the rejection of claim 45 under § 112 and will be entered by the Examiner. Therefore, it is Applicants' representative's understanding that barring additional materially relevant prior art being found in an updated search by Examiner Ly, the present claims are now in condition for allowance. The substance of the interview is summarized in the remarks of Sections II and III, which follows below.

**II. 35 U.S.C. § 112, First Paragraph, Claims 1-3, 5-7, 10-18, 25, 26, 29-35, 42, 44-46, 48, and 49**

The Examiner rejects claims 1-3, 5-7, 10-18, 25, 26, 29-35, 42, 44-46, 48, and 49 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed.

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. *In re Kaslow*, 707 F.2d 1366, 1375, 217 U.S.P.Q. 1089, 1096 (Fed. Cir. 1983); *In re Edwards*, 558 F.2d 1349, 1351, 196 U.S.P.Q. 465, 467 (C.C.P.A. 1978); *In re Herschler*, 591 F.2d 693, 701, 200 U.S.P.Q. 711, 717 (C.C.P.A. 1979). In determining whether the written description requirement is satisfied, the specification as a whole must be considered. *In re Wright*, 866 F.2d

422, 425, 9 U.S.P.Q.2d 1649, 1651 (Fed. Cir. 1989). In this case, the written description requirement is satisfied because the original specification reasonably conveys support for the later claimed subject matter.

In rejecting the claims, the Examiner states:

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **NEW MATTER.**

6. The instant rejection has been necessitated by claim amendments.

7. Claim 1, lines 11 and 15, recite the limitation of "average total amount of time" which has not been found in the instant specification. It is noted that the instant specification (paragraphs [0053], [0054], [0057], [0061], [0066], etc.) describes the claimed invention with respect to the generic limitation of "average" time, which does not provide written basis for the new limitation. The same issue is present in claims 25 and 42.

8. Claim 45, line 2, recites the limitation of "average time calculations offline" which has not been found in the instant specification. It is noted that the pointed to support (pages 18-19) describes the claimed invention with respect to the limitation of "minimum/maximum/average wait time calculations offline", which does not provide written basis for the new limitation.

Final Office Action dated April 7, 2006, pages 2 and 3.

Independent claim 1 of the present invention, which is representative of independent claims 25 and 42, reads as follows:

1. A method of generating an estimate of an amount of time required to complete a content request for content to be transmitted over a network, comprising:
  - receiving a first estimate of an amount of time to retrieve or prepare requested content in a content source device, wherein the first estimate includes a minimum, maximum, and average amount of time to retrieve or prepare the requested content;
  - generating a second estimate of an amount of time to receive the requested content over a communication link from the content source device;
  - generating a third estimate of a total amount of time to complete the content request based on the first and second time estimates, wherein the third estimate includes a minimum, maximum, and average total amount of time to complete the content request;*
  - generating a graphical representation of the third estimate, wherein the graphical representation includes an indicator for each of the minimum, maximum, and average total amount of time to complete the content request; and*
  - outputting the graphical representation on a display device. [Emphasis added].

For ease of description and understanding, portions of claim 1 are highlighted above. The portions of claim 1 in italics indicate the original language of the rejected elements that the Examiner alleges contain new matter. The portions underlined indicate previously incorporated features of canceled dependent claims and the portions in bold indicate the most recent claim amendments, which are the basis

of the instant rejection. Original dependent claims 8 and 9, which were canceled to incorporate their features into independent claim 1, read as follows:

8. The method of claim 1, wherein the third estimate includes a minimum estimated time of completion, a maximum estimated time of completion and an average time of completion for the content request.

9. The method of claim 8, wherein the graphical representation includes an indicator for each of the minimum estimated time of completion, maximum estimated time of completion and average time of completion for the content request.

As shown above, claim 1 originally recites "generating a third estimate of a total amount of time to complete the content request based on the first and second time estimates." [Emphasis added]. In other words, the third estimate is based on the first estimate, which includes a minimum, maximum, and average amount of time to retrieve or prepare the requested content, and the second estimate, which is an amount of time to receive the requested content over a communication link from the content source device, to generate a total amount of time to complete the content request as originally recited in claim 1. Because the first estimate includes a minimum, maximum, and average amount of time to retrieve or prepare the requested content and the second estimate is an amount of time to receive the requested content, the third estimate, which is based on the first and second estimates, must be a total of the first and second time estimates combined. Thus, the third estimate is a total amount of time to complete the content request based on the first and second time estimates as originally recited in claim 1. Furthermore, since the first estimate includes a minimum, maximum, and average time estimate, then the third estimate must include a minimum, maximum, and average time estimate because the third estimate is the sum of the second estimate added to the first minimum, maximum, and average time estimates.

Claim 8 originally recites that the third estimate includes a minimum estimated time of completion, a maximum estimated time of completion and an average time of completion for the content request. The "time of completion for the content request" language recited in original claim 8 is equivalent to the "total amount of time to complete the content request" language recited in original claim 1. In other words, to be consistent with the original language of claim 1, original claim 8 should have recited that the third estimate includes a minimum estimated total amount of time to complete the content request, a maximum estimated total amount of time to complete the content request, and an average estimated total amount of time to complete the content request. The same arguments apply to original claim 9, except that the argument is applied to the graphical representation of the third estimate, which includes an indicator for each of the minimum estimated total amount of time to complete the content request, a maximum estimated total amount of time to complete the content request, and an average estimated total amount of time to complete the content request.

Therefore, by incorporating the features of canceled dependent claims 8 and 9, when claim 1 recites that "the third estimate includes a minimum, maximum, and average total amount of time to complete the content request," claim 1 means that the third estimate includes a minimum total amount of time to complete the content request, a maximum total amount of time to complete the content request, and an average total amount of time to complete the content request. The Office Action mistakenly alleges that the term "total amount of time" only applies to the word "average." Final Office Action dated April 7, 2006, pages 2 and 3, item 7. As shown from the original claim language of canceled claims 8 and 9 above, the term "total amount of time" applies to each of the words "minimum, maximum, and average" as recited in claim 1.

Consequently, the newly amended language forming the basis of the new matter rejection of claim 1 is supported by the original claims. Moreover, support for these rejected claim 1 features may be found in the specification on page 21, lines 15-24. This cited passage from the specification reads as follows:

In addition, the time estimate received from the server may further include indications of the minimum, average and maximum time estimates for retrieval/preparation of the requested content. These values may be used along with the second time estimate to generate minimum, average, and maximum total time estimates which are then depicted in the graphical representation. In this way, the user of the client device 510 is informed of the shortest, average and longest waiting times one might realistically expect. [Emphasis added].

In other words, the time estimate received from the server, or content source device, includes a minimum, average, and maximum amount of time to retrieve or prepare the requested content, which is the "first estimate" recited in claim 1. Further, "these values," which are the minimum, average, and maximum amount of time to retrieve or prepare the requested content of the first estimate, are "used along with the second estimate to generate minimum, average, and maximum total time estimates" to complete the content request, which is the third estimate recited in claim 1. These minimum, average, and maximum total time estimates "are then depicted in the graphical representation." Hence, the limitation of "average total amount of time," which also includes minimum and maximum, is supported by the original specification and is not new matter.

Accordingly, the rejection of independent claims 1, 25, and 42 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement has been overcome. In view of the arguments above, independent claims 1, 25, and 42 are in condition for allowance. Claims 2, 3, 5-7, 10-18, 26, 29-35, 44, 46, 48, and 49 are dependent claims depending on independent claims 1 and 25. Consequently, claims 2, 3, 5-7, 10-18, 26, 29-35, 44, 46, 48, and 49 also are allowable, at least by virtue of their dependence on allowable claims.

With regard to dependent claim 45, claim 45 is amended to recite "minimum, maximum, and average wait time calculations offline," instead of "minimum, maximum, and average time calculations offline" to coincide with the specific language found in the specification on page 19, lines 19 and 20. This claim 45 amendment is in accordance with the Examiner's recommendation. Accordingly, the rejection of dependent claim 45 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement has been overcome. Claim 45 is a dependent claim depending on independent claim 1. Consequently, claim 45 also is allowable, at least by virtue of its dependence on an allowable claim.

**III. 35 U.S.C. § 102. Anticipation. Claims 19, 20, 22-24, 36, 37, 39-41, 43, 47, and 50**

The Examiner rejects claims 19, 20, 22-24, 36, 37, 39-41, 43, 47, and 50 under 35 U.S.C. § 102 as being anticipated by Chmaytelli et al., U.S. Patent Publication No. 2002/0194325 A1 ("Chmaytelli"). This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In this case, each and every feature of the presently claimed invention is not shown in the cited reference as arranged in the claims.

Amended independent claim 19 of the present invention, which is representative of amended independent claims 36 and 43, reads as follows:

19. A method of generating an estimate of an amount of time required to retrieve or prepare requested content, comprising:
- receiving a request for content, the request including one or more parameters;
  - identifying previously completed request information regarding a previously completed request based on the one or more parameters, the information including a time required to retrieve or prepare the content of the previously completed request, wherein the time required to retrieve or prepare the content is the time required for a content source device to retrieve or prepare the content for transmission from the content source device;
  - generating a minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content based on the previously completed request information;
  - generating a graphical representation of the minimum, maximum, and average time estimates; and
  - outputting the graphical representation on a display device.

With regard to claim 19, the Examiner states:

12. In regard to claim 19, Chmaytelli discloses a method of generating an estimate of an amount of time required to retrieve or prepare requested content, comprising:

- a. Receiving a request for content, the request including one or more parameters (paragraphs [0047] and [0071]);
- b. Identifying previously completed request information regarding a previously completed request based on the one or more parameters, the information including a time required to retrieve or prepare the content of the previously completed request (paragraphs [0047], [0071], [0052], and Figure 5a);
- c. Generating a minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content based on the previously completed request information (paragraphs [0047] and [0071], and Figure 5b).
- d. Outputting the graphical representation on a display device (paragraphs [0060] and [0071], and Figure 5b).

It is noted that the cited Figure 5b discloses different estimate of time wherein the value of 4.9 minutes has been interpreted as "minimum" and 5.2 as "maximum."

Final Office Action dated April 7, 2006, pages 3 and 4.

Chmaytelli teaches a method for estimating and displaying a length of time to download an application program over a network based on calculated data transfer rates. Chmaytelli, page 4, paragraph 0045. [Emphasis added]. The data transfer rate is the rate at which data is transferred over the network. Chmaytelli, page 1, paragraph 0007. [Emphasis added]. The wireless device calculates the data transfer rate for data files that it receives from a server. Chmaytelli, page 4, paragraph 0051. [Emphasis added]. The data files comprise metadata about application programs stored on the server, which may be downloaded into the wireless device. Chmaytelli, page 3, paragraph 0037. Data files include descriptive information regarding the application programs, such as a list of the application programs available, their cost, their size, a description of their content, and/or a short demonstration of how the application performs. Chmaytelli, page 3, paragraph 0038. In addition, the data files include a description of the size of the data file, for example, the number of bytes the data file contains, in order to calculate data transfer rates. Chmaytelli, page 3, paragraph 0039.

The wireless device calculates three data transfer rates based on the contents of three specific data files. Chmaytelli, page 5, paragraph 0058. The initial data file contains a list of available application programs names. Chmaytelli, page 4, paragraph 0050. The second data file contains a description of a user selected application program contained on the list within the initial data file. Chmaytelli, page 4, paragraph 0053. The third data file contains a demonstration of a user selected application program contained on the list within the initial data file. Chmaytelli, page 4, paragraph 0054. The wireless device calculates each of the three data transfer rates by dividing the size of the data file by the time

required to download the data file from the server. Chmaytelli, pages 4 and 5, paragraphs 0052, 0054, and 0056. [Emphasis added].

A user of the wireless device selects an application program for download after receiving one or more of the three specific data files. Chmaytelli, page 5, paragraph 0067. The server sends information regarding the size of the selected application program to the wireless device. Chmaytelli, page 5, paragraph 0068. The wireless device estimates the length of time to download the selected application program by dividing the size of the selected application program with an average data transfer rate. Chmaytelli, page 6, paragraph 0070. [Emphasis added]. The average data transfer rate is based upon the data transfer rate calculations for the three specific data files previously received by the wireless device. Chmaytelli, pages 5 and 6, paragraph 0069. [Emphasis added].

In other words, the method of Chmaytelli estimates application program download time by dividing the size of the application program by an average data transfer rate, which represents the time required to "receive" the data over the network and not the time required to "retrieve or prepare" the data prior to transmission over the network. The average data transfer rate is determined by utilizing previously calculated data transfer rates for three specific data files. The wireless device calculates the data transfer rates for the three specific data files by dividing the size of each specific data file by the time required to download, or receive, each specific data file from the server. Consequently, both the data transfer rate calculation and the application program download estimation are determined by dividing the size of the file or program by a determined download time. In addition, the wireless device, or client device, performs all of the calculation, not the server or content source device.

In contrast, claim 19 of the present invention recites a "method of generating an estimate of an amount of time required to retrieve or prepare requested content," which includes "identifying previously completed request information regarding a previously completed request based on the one or more parameters, the information including a time required to retrieve or prepare the content of the previously completed request, wherein the time required to retrieve or prepare the content is the time required for a content source device to retrieve or prepare the content for transmission from the content source device." Support for this feature may be found in the Specification on page 14, line 10 – page 16, line 2. In other words, the present invention recites in claim 19 that the content source device, or server, estimates the time required to retrieve or prepare the requested content for transmission from the content source device. The content source device estimates the time required to "retrieve or prepare" the content prior to transmission over a network as recited in claim 19, whereas, the wireless device estimates the time required to "receive" the content over the network based on data the transfer rate as taught by Chmaytelli.

Chmaytelli does not teach receiving an estimate of an amount of time to retrieve or prepare requested content for transmission from the content source device as recited in claim 19. Chmaytelli

makes no reference to the server retrieving or preparing data files for transmission over the network to the wireless device or to estimating the time required for such processes to occur. Furthermore, because Chmaytelli does not teach identifying previously completed request information regarding a previously completed request based on the one or more parameters, the information including a time required to retrieve or prepare the content of the previously completed request, wherein the time required to retrieve or prepare the content is the time required for a content source device to retrieve or prepare the content for transmission from the content source device as recited in claim 19, Chmaytelli cannot teach generating a minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content based on the previously completed request information as further recited in claim 19. In addition, since Chmaytelli does not teach generating a minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content based on the previously completed request information, then Chmaytelli cannot teach generating a graphical representation of the minimum, maximum, and average time estimates as further recited in claim 19.

Even though Chmaytelli teaches an average data transfer rate, this average data transfer rate as taught by Chmaytelli is the average amount of time required for a wireless device to "receive" one or more specific data files relating to available application programs over the network from the server. In contrast, claim 19 recites an average amount of time for the content source device to retrieve or prepare the requested content for transmission from the content source device. Therefore, the average data transfer rate as taught by Chmaytelli is distinguishable from the average time estimate of an amount of time required to retrieve or prepare the requested content as recited in claim 19.

Even though Chmaytelli teaches displaying to the user an estimated time required to download a selected application program (Chmaytelli, page 5, paragraph 0060), Chmaytelli does not teach generating a graphical representation of the minimum, maximum, and average time estimates as recited in claim 19. Chmaytelli makes no reference to simultaneously displaying three graphical representations for the estimated download time for the selected application program. The Examiner cites Chmaytelli, Figure 5b, as teaching generating a graphical representation of the minimum, maximum, and average time estimates as recited in claim 19. However, Figure 5b of Chmaytelli is a table of exemplary time estimates of different averages, which the wireless device uses internally to calculate data transfer rates. Chmaytelli, paragraph 0071. Chmaytelli does not teach that the table of Figure 5b is generated as a graphical representation for output in a display, whereas, claim 19 recites generating a graphical representation of the minimum, maximum, and average time estimates and outputting the graphical representation on a display device. As a result, Chmaytelli does not identically teach each and every element recited in amended claim 19 of the present invention.



Accordingly, the rejection of amended independent claims 19, 36, and 43 as being anticipated by Chmaytelli has been overcome. In view of the arguments above, amended independent claims 19, 36, and 43 are in condition for allowance. Claims 20, 22-24, 37, 39-41, 47, and 50 are dependent claims depending on independent claims 19 and 36. Consequently, claims 20, 22-24, 37, 39-41, 47, and 50 also are allowable, at least by virtue of their dependence on allowable claims. Furthermore, these dependent claims also contain additional features not taught by Chmaytelli.

For example, dependent claim 22 of the present invention, which is representative of dependent claim 39, reads as follows:

22. The method of claim 19, wherein generating the minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content includes generating the time estimate based on a time to retrieve or prepare content identified in the previously completed request information, a system load at the time of the previously completed request, and a current system load.

With regard to claim 22, the Examiner states:

14. In regard to claim 22, Chmaytelli discloses generating the minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content includes generating the time estimate based on a time to retrieve or prepare content identified in the previously completed request information (paragraph [0052]), a system load at the time of the previously completed request (paragraph [0052], lines 4-7), and a current system load (paragraph [0052], lines 7-11).

Final Office Action dated April 7, 2006, page 4.

As shown above, Chmaytelli does not teach estimating a time required to retrieve or prepare the requested content for transmission from the content source device and generating a minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content as recited in independent claim 19. Consequently, Chmaytelli cannot teach wherein generating the minimum, maximum, and average time estimate of an amount of time required to retrieve or prepare the requested content includes generating the time estimate based on a time to retrieve or prepare content identified in the previously completed request information, a system load at the time of the previously completed request, and a current system load as recited in dependent claim 22. Therefore, Chmaytelli does not teach this claim 22 recited feature.

As a further example, dependent claim 24 of the present invention, which is representative of dependent claim 41, reads as follows:

24. The method of claim 19, further comprising:  
transmitting the time estimate to a client device.

With regard to claim 24, the Examiner states:

16. In regard to claim 24, Chmaytelli discloses transmitting the time estimate to a client device (paragraphs [0048]-[0051]).

Final Office Action dated April 7, 2006, page 5.

As shown above, Chmaytelli teaches that the wireless device, or client device, calculates the corresponding data transfer rate for the data file received from the server by dividing the size of the data file, which the wireless device gets from the data file itself, by the time required to download, or receive, the data file over the network from the server. Chmaytelli, paragraph 0051. In other words, Chmaytelli teaches that the wireless device does all the necessary calculation to determine data transfer rates for the selected data file. In contrast, claim 24 recites transmitting the time estimate to a client device. In other words, claim 24 recites that the content source device calculates the time estimates and then sends the time estimates to the client device, whereas, Chmaytelli teaches that the wireless device calculates the data transfer rate itself. Chmaytelli makes no reference to the wireless device transmitting the data transfer rate calculations to another device. Consequently, Chmaytelli does not teach this claim 24 recited feature.

As a further example, dependent claim 47 of the present invention, which is representative of dependent claim 50, reads as follows:

47. The method of claim 20, wherein the table lookup includes a first and second table, and wherein the first table includes one new entry for each content request, and wherein the second table includes one new entry for each unique content request that contains minimum, maximum, and average time calculations for each unique content request.

With regard to claim 47, the Examiner states:

17. In regard to 47, Chmaytelli discloses the table lookup includes a first and second table, and wherein the first table includes one new entry for each content request (Figure 5a), and wherein the second table includes one new entry for each unique content request that contains minimum, maximum, and average time calculations for each unique content request (Figure 5b).

Even though Chmaytelli teaches a first and second table, Chmaytelli does not teach that the second table includes one new entry for each unique content request. Chmaytelli teaches in Figure 5a data transfer rate calculations for the three specific data files, which are the list of applications, description of selected applications, and demonstrations of selected applications, received from the server. Chmaytelli, paragraphs 0050-0056. Chmaytelli teaches in Figure 5b several different time average estimates, such as straight average, weighted average, moving average, and moving weighted average, to

download selected application programs. However, Chmaytelli does not teach that the second table, which in this case is Figure 5b of Chmaytelli, includes one new entry for each unique content request as recited in claim 47. Chmaytelli teaches that Figure 5b is a table of exemplary calculations done by the wireless device to reach different averages of the data transfer rates, which are then used to estimate the time to download the application program. Chmaytelli, paragraph 0071. Chmaytelli makes no reference to a unique content request entry for each unique content request in the second table as recited in claim 47. Thus, Chmaytelli does not teach this claim 47 recited feature.

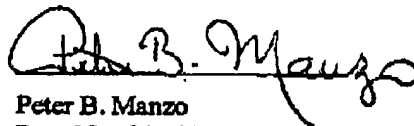
#### IV. Conclusion

It is respectfully urged that the subject application is patentable over the cited prior art reference and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: May 9, 2006

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